

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1612-02  
Bill No.: HB 600  
Subject: Open Records; Public Meetings; General Assembly  
Type: Original  
Date: February 25, 2013

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Bill Summary: This proposal modifies provisions relating to the Open Records and Meetings Law.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown - could exceed \$100,000)</b>	<b>(Unknown - could exceed \$100,000)</b>	<b>(Unknown - could exceed \$100,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
Other State Funds	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(Unknown - could exceed \$100,000)</b>	<b>(Unknown - could exceed \$100,000)</b>	<b>(Unknown - could exceed \$100,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 14 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Local Government</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Social Services (DOS)** state the provision of the Sunshine Law requiring that all public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, would be amended to specify that reasonable notice shall include making available copies of the notice to “any member of the public” in addition to members of the media. The second paragraph of this section would be amended to require that the notice required in the first paragraph of this section shall be given at least forty-eight hours, as opposed to twenty-four hours as it previously had provided, or twenty-four hours for the general assembly and any committee thereof, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical. The fourth paragraph of this section would be amended to provide that when it is necessary for such governmental bodies to hold a meeting on less than forty-eight hours' notice, instead of twenty-four hours as it previously had been, or twenty-four hours' notice for the general assembly and any committee thereof, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes. Finally, the seventh paragraph of this section would be amended to provide that the journal or minutes of open and closed meetings shall include, but not be limited to, the date, time, place, members present, members absent, and a record of any votes taken. When a roll call vote is taken, the minutes shall attribute each "yea" and "nay" vote or abstinence if not voting to the name of the individual member of the public governmental body. Minutes shall reflect a summary of the discussions occurring during any closed meeting, but nothing in this subsection shall require the disclosure of records or votes that are properly closed under § 610.021.

The bill also amends §610.021, RSMo, the section of the Sunshine Law, which authorizes public governmental bodies to close certain classes of information and meetings except to the extent disclosure is otherwise required by law. First, the bill would amend subparagraph (1), which allows for the closure of records/meetings pertaining to legal actions involving a public governmental body. This provision would be amended to require that any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, to be publicly disclosed in an open meeting upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement. Currently, public governmental bodies are only required to make such information available to the public – thus the requirement has been changed from passive to active.

ASSUMPTION (continued)

Additionally, this requirement applies unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of § 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed. However, in matters involving the exercise of the power of eminent domain, the vote shall be publicly disclosed in an open meeting immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record. Again, the law currently requires public governmental bodies to only make such information available to the public. Finally, this provision would also be amended to provide that when public disclosure in an open meeting is prescribed, such disclosure shall be done orally or in writing, or both, and shall occur at the next scheduled open meeting of the public body, or at the resumption of a recessed or subsequent open meeting, whatever is applicable soonest to the time lines for disclosure as prescribed in this section. Where the public governmental body shall close meetings, records, and votes due to a "cause of action" as provided in this subdivision, the body shall have received evidence that a lawsuit has been filed, although not yet served, or shall have actual correspondence from a party stating that litigation shall be filed under certain circumstances stated in said correspondence.

The bill would also amend § 610.022, RSMo, the provision of the Sunshine Law which prohibits the closure of a meeting or vote of a public governmental body without an affirmative public vote of the majority of a quorum of the public governmental body, would be amended in its third paragraph to specify that only members of a public governmental body, their attorney and staff assistants, and any other person necessary to provide information needed by or requested by the public governmental body in regard to the matter being discussed shall be permitted in a closed meeting.

The bill would also amend § 610.023.1, RSMo, the provision of the Sunshine Law requiring each public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records, would be amended to "encourage" (*e.g.*, not require) each custodian of a public governmental body to create and maintain an index of all public records maintained by its public governmental body.

The bill would also amend § 610.027, RSMo, the provision of the Sunshine Law which establishes the remedies against public governmental bodies shall be in addition to those provided by any other provision of law, to provide that, in any legal proceeding, there shall be a presumption that a meeting, record, or vote is open to the public. The burden shall be on a public governmental body or a member of a public governmental body to prove that such meeting, record, or vote may be closed to the public.

ASSUMPTION (continued)

Further, the third paragraph of this section would be amended to provide that upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has violated the Sunshine Law, the public governmental body or the member shall be subject to a civil penalty in an amount of one hundred dollars. This provision has been amended to no longer require that the violation be “knowingly,” but the fine has been lowered from \$1,000.00 to \$100.00. In other words, this provision would become one of strict liability – if you violate it, you will be fined regardless of your intent or knowledge in doing so. Further, this provision has also been amended to require the court, upon finding that a public governmental body has violated the Sunshine Law, to order the public governmental body or the individual employee to pay all costs and reasonable attorney fees to any party successfully establishing a violation. Again, this provision has been amended to no longer require that the violation be “knowingly,” thus making it one of strict liability. This provision would also be amended to eliminate the requirement that the court determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated the Sunshine Law previously. Again, this change simply reinforces the new strict liability nature of the amendment. Finally, in §610.027.5, the language has been amended so that the court can void actions taken in both open and closed meetings that violate the Sunshine Law.

The proposed amendment to § 610.027.3, RSMo, the provision of the Sunshine Law that establishes the remedies against public governmental bodies for violations of the Sunshine Law, would be very problematic to the department. As noted above, this provision would be amended to provide that, upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has violated the Sunshine Law, the public governmental body or the member (*e.g.*, the employee(s)) shall be subject to a civil penalty in an amount of one hundred dollars. This provision has been amended to no longer require that the violation be “knowingly.” Thus, in other words, this provision would become one of strict liability – if you violate it, you will be fined regardless of your intent or knowledge in doing so. Further, this provision would also be amended to require the court, upon finding that a public governmental body has violated the Sunshine Law, to order the public governmental body or the individual employee to pay all costs and reasonable attorney fees to any party successfully establishing a violation. Again, this provision has been amended to no longer require that the violation be “knowingly,” thus, making it one of strict liability. Finally, this provision would be amended to eliminate the requirement that the court determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated the Sunshine Law previously. Again, this change simply reinforces the new strict liability nature of the amendment.

ASSUMPTION (continued)

These changes are problematic in that they leave no room for reasonable differences in interpretation of state and federal confidentiality laws, which often seemingly contradict one another or leave many issues subject to individual interpretation. Under these changes, if a judge disagrees with the department's interpretation of an applicable law, no matter how reasonable it may be, the department and/or possibly the employee *will be* fined and required to pay the opposing side's litigation costs. Litigation cost can, and considering the average attorney in the State of Missouri charges approximately \$150.00 to \$250.00 per hour, often do amount to thousands of dollars. Aside from obviously encouraging parties to take the department to court over any dispute under the Sunshine Law, these changes also place the department and/or the employee in the untenable position of choosing whether to possibly violate applicable confidentiality laws, or the Sunshine Law. Considering most state and federal confidentiality law carry with them civil and criminal penalties for those who violate them, these changes to the Sunshine Law make either choice unattractive.

In summary, the Division of Legal Services for DOS expects an unknown negative fiscal impact greater than \$100,000 as a result of the proposal.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state this bill requires that any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation and votes authorizing legal actions in exercise of eminent domain occurring or agreed to during a closed meeting be publicly disclosed in an open meeting instead of just announced or becoming public upon request. This could have a fiscal impact on the DOLIR.

§610.027.3 removes language that requires that a violation of the law be "knowingly" and makes a \$100 fine mandatory instead of previous language providing that up to \$1,000 penalty may be charged. In addition, the new language requires, instead of allows, the court to order the payment by the government of costs and reasonable attorney fees to a party that successfully established a violation of the Sunshine Law. This could have a fiscal impact on the Department.

In summary, DOLIR assumes a negative impact to their agency, of under \$100,000.

Officials from the **Department of Elementary and Secondary Education** state there is no anticipated state cost to the foundation formula associated with this proposal. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year.

ASSUMPTION (continued)

Therefore the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

In summary, DESE assumes an unknown amount of cost to their agency from the proposed legislation.

Officials from the **Department of Mental Health** state a concern with removing “knowing” is that any failure to follow the Sunshine Law, even if it is accidental or inadvertent, would be a violation. Considering the volume of records handled by the department, on occasion a record, meeting or vote could be closed incorrectly or there could be some other violation without intent to violate the Sunshine Law. With the proposed change, no matter if the violation was accidental, the court would be required to impose both the penalty and attorney fees and costs against the department. As a result, this change would have an unknown fiscal impact on the department.

§ 610.027.5. Since this section currently only applies to actions taken in a closed meeting, record or vote, which is a much narrower set of activities than the overall business of the department that is typically open, it is hard to determine the potential impact. However, given that the change to this section applies enforcement to all activities of the department, there is a potential unknown fiscal impact.

In response to a similar proposal from this year (SB 122), officials from the **Department of Health and Senior Services** stated the proposed legislation would result in an unknown negative impact to their department.

Officials from the **Department of Natural Resources** stated the provisions of this proposal could have a fiscal impact to their department. Due to many unknown variables, the amount of the fiscal impact cannot be determined at this time.

ASSUMPTION (continued)

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** believe it can absorb the additional workload that would result from creating and maintaining a simple index of department public records, e.g. by subject, within existing appropriations. However, should the workload be more than anticipated or should the index be required to be very detailed, DIFP would request additional appropriations and/or FTE through the budget process to cover the additional cost.

In response to a similar proposal from this year (SB 122), officials from the **City of Kansas City** stated costs could easily exceed \$100,000 each year. The proposed definition of ‘cause of action’ eliminates attorney-client communications during the claims process. If the City has to wait for a claim to become a threatened lawsuit before the City’s attorneys can discuss settlement with City officials, the cost to the City will increase tremendously as attorneys’ fees and costs are incurred by both sides. We settle hundreds of claims each year before lawsuits are threatened or filed. This would also have a negative impact on our citizens who could not have claims promptly negotiated. The 48 hour notice will increase the City’s administrative costs in that additional meetings will need to be held on matters that arise between the current 24 hour notice period and the proposed 48 hour notice period. The strict liability standard for violations and attorneys’ fees will also increase the City’s costs.

In response to a similar proposal from last year (SB 764), officials from the **City of Columbia** stated the proposal would have the following fiscal impact:

Add staff time:

- §610.020.7 - minutes shall reflect a summary of discussion - amount of time depends on the specific public body, subject matter, duration of the meeting, length to transcribe and summarize - this work may be performed by a higher-level administrative assistant or professional staff member - City of Columbia employees provide staff support to 61 Council-appointed boards and commissions;

Could add time and costs:

- §610.027.6 - repeals ability to clear up doubt about closed records/meetings/votes through opinions from AG or governmental body's attorney and forces the body to seek court action



ASSUMPTION (continued)

Potential for significant cost - more clarity needed:

- §610.023.1 - encouraged to create an index of all public records - while not a strict mandate, and while it could be helpful, indexing all of the City's records (likely numbering in the millions, including those that must be permanently retained) will require considerable work over time. The City has approximately 20 records custodians managing this resource. We have records inventories for the classes of records identified by the Secretary of State, but an index of each record is a vast assignment requiring staff time and technology.
- §610.023.3 - formats "easily accessed and managed by programs commonly available to the public" - this gets at the heart of how organizations manage their business data and records - if the intent is to require that all public entities manage their data using one or several selected format options, this could limit their choice of software product vendors and possibly require hours of staff time to convert non-compliant data to new systems. Those involved with decisions and implementation for the City of Columbia would include high-level administrators; purchasing agents; IT programmers and system support staff; records custodians; and other professional and administrative staff who use and manage data on a daily basis.

In response to a similar proposal from last year (SB 764), officials from the **City of Kirksville** stated doubling the amount of time of a notice prior to a meeting places a large imposition on the City Clerk and others who are responsible for posting notices. We prepare the agendas on a Friday prior to a Monday Council meeting, and posting the notice during that preparation time works. Moving to 48 hours, the day before the agenda preparation, will require a separate notice.

In response to a similar proposal from last year (SB 764), officials from the **Mexico School District** stated they cannot determine the fiscal impact from the proposal at this time.

In response to a similar proposal from last year (SB 764), officials from **Missouri Western State University** stated there would be a small increase in their expenses. Also, there may be increased cost to acquire software necessary to comply with the new provision.

In response to a similar proposal from this year (SB 122), officials from the **Parkway Schools District** assume the proposal will have no fiscal impact on their organization.

ASSUMPTION (continued)

In response to a similar proposal from last year (SB 764), officials from **Linn State Technical College, Metropolitan Community College, University of Central Missouri, Northwest Missouri State University, Missouri State University, Missouri Southern State University, and St. Louis County** each assumed the proposal would not fiscally impact their respective agencies.

The officials from the **Attorney General's Office** assume any potential cost arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Agriculture, Administrative Hearing Commission, Office of Administration - Budget and Planning, Bi-State Development, Office of Administration, Office of the State Courts Administrator, Department of Economic Development, Department of Transportation, Department of Corrections, Department of Higher Education, Department of Public Safety (Capitol Police, Division of Alcohol and Tobacco and Fire Safety), Missouri Gaming Commission, Missouri Consolidated Health Care Plan, MoDOT & Patrol Employees' Retirement System, Joint Committee on Administrative Rules, Joint Committee on Public Retirement, Missouri Lottery Commission, Missouri Department of Conservation, Missouri Ethics Commission, Missouri Highway Patrol, Missouri State Employees Retirement System, Office of the State Auditor, Missouri Senate, Office of the Secretary of State, Office of the State Public Defender, Office of the State Treasurer, State Tax Commission** and the **Missouri Veterans Commission** assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **Governor's Office** assume there should be no added cost to their office as a result of this measure.

With the numerous 'unknown negative fiscal impact' responses, **Oversight** will assume the proposal will result in both additional costs and reduced income to various state agencies and local political subdivisions. Oversight assumes this fiscal impact could touch various state funds.

<u>FISCAL IMPACT - State Government</u>	FY 2014	FY 2015	FY 2016
<b>GENERAL REVENUE</b>			
<u>Cost</u> - to various state agencies			
To comply with various parts of the proposal	(Unknown)	(Unknown)	(Unknown)
<u>Loss</u> - to various state agencies			
of recoverable fees from producing documents	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>	<b>(Unknown - could exceed <u>\$100,000</u>)</b>	<b>(Unknown - could exceed <u>\$100,000</u>)</b>	<b>(Unknown - could exceed <u>\$100,000</u>)</b>
<b>OTHER STATE FUNDS</b>			
<u>Cost</u> - to various state agencies			
To comply with various parts of the proposal	(Unknown)	(Unknown)	(Unknown)
<u>Loss</u> - to various state agencies			
of recoverable fees from producing documents	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO OTHER STATE FUNDS</b>	<b>(Unknown - could exceed <u>\$100,000</u>)</b>	<b>(Unknown - could exceed <u>\$100,000</u>)</b>	<b>(Unknown - could exceed <u>\$100,000</u>)</b>

FISCAL IMPACT - Local Government

FY 2014

FY 2015

FY 2016

**LOCAL POLITICAL SUBDIVISIONS**

Cost - to various local political  
subdivisions:

To comply with various parts of the  
proposal

(Unknown)

(Unknown)

(Unknown)

Loss - to various local political  
subdivisions

of recoverable fees from producing  
documents

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT TO  
LOCAL POLITICAL SUBDIVISIONS**

**(Unknown)**

**(Unknown)**

**(Unknown)**

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill changes the laws regarding the Open Records and Meetings Law, commonly known as the Sunshine Law. The bill specifies that any lease, sublease, rental agreement, or similar instrument entered into by any public governmental body or any other agreement for the rental, construction, or renovation of the facility must be a public record. Reasonable notice of meetings of public governmental bodies must include making available copies of the notice to any member of the public who requests notice of meetings of a particular public governmental body when the notice is made available to the members of that body. All public governmental bodies must give notice of the time, date, and place of each meeting, and its tentative agenda at least 48 hours, or in the case of the General Assembly and any of its committees 24 hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of the meeting unless for good cause as specified in the minutes. The minutes of a closed meeting must contain a list of the subjects discussed but are not required to disclose records or votes that are properly closed under Section 610.021, RSMo.

### FISCAL DESCRIPTION (continued)

Public disclosure of legal work product in an open meeting must be made orally or in writing, or both, and must occur at the next scheduled open meeting of the public body or at the resumption of a recessed or subsequent open meeting, whatever is applicable soonest to the timelines for disclosure as specified under these provisions. A body must have received evidence that a lawsuit has been filed, although not yet served, or have actual correspondence from a party stating that litigation will be filed under certain circumstances before it closes meetings, records, and votes due to a cause of action.

This legislation has an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

### SOURCES OF INFORMATION

Attorney General's Office  
Department of Agriculture  
Administrative Hearing Commission  
Office of Administration - Budget and Planning  
Bi-State Development  
Office of Administration  
Office of the State Courts Administrator  
Department of Economic Development  
Department of Elementary and Secondary Education  
Department of Transportation  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Mental Health  
Department of Natural Resources  
Department of Corrections  
Department of Health and Senior Services  
Department of Labor and Industrial Relations  
Department of Higher Education  
Department of Social Services  
Department of Public Safety  
Missouri Gaming Commission  
Office of the Governor  
Missouri Consolidated Health Care Plan

SOURCES OF INFORMATION (continued)

MoDOT & Patrol Employees' Retirement System  
Joint Committee on Administrative Rules  
Joint Committee on Public Retirement  
Missouri Lottery Commission  
Missouri Department of Conservation  
Missouri Ethics Commission  
Missouri Highway Patrol  
Missouri State Employees Retirement System  
Office of the State Auditor  
Missouri Senate  
Office of the Secretary of State  
Office of the State Public Defender  
Office of the State Treasurer  
State Tax Commission  
Missouri Veterans Commission  
City of Kansas City  
City of Columbia  
City of Kirksville  
Mexico School District  
Missouri Western State University  
Linn State Technical College  
Metropolitan Community College  
University of Central Missouri  
Northwest Missouri State University  
Missouri State University  
Missouri Southern State University  
St. Louis County  
Parkway School District



Ross Strope  
Acting Director  
February 25, 2013